

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

|                                |   |                                    |
|--------------------------------|---|------------------------------------|
| In re:                         | ) |                                    |
|                                | ) |                                    |
| SRC Holding Corp.              | ) | Chapter 7 Case                     |
| f/k/a Miller & Schroeder, Inc. | ) | BKY Case Nos. 02-40284 to 02-40286 |
| and its subsidiaries,          | ) | Jointly Administered               |
|                                | ) |                                    |
| Debtor.                        | ) |                                    |
| <hr/>                          |   |                                    |
| Brian F. Leonard, Trustee,     | ) |                                    |
|                                | ) |                                    |
| Plaintiff,                     | ) | ADV Case No. 03-4284               |
|                                | ) |                                    |
| vs.                            | ) | <b>ANSWER</b>                      |
|                                | ) |                                    |
| Executive Risk Indemnity Inc., | ) | <b>NON-CORE PROCEEDING</b>         |
|                                | ) |                                    |
| Defendant.                     | ) |                                    |
| <hr/>                          |   |                                    |

**EXECUTIVE RISK INDEMNITY INC.'S ANSWER**

Executive Risk Indemnity Inc. ("Executive Risk"), defendant, by its undersigned attorneys, answers the complaint of Brian F. Leonard, Trustee ("Trustee"), as follows:

**JURISDICTION**

1. Upon information and belief, Executive Risk admits the allegations contained in paragraph 1 of the Complaint.
  
2. Upon information and belief, Executive Risk admits the allegations contained in paragraph 2 of the Complaint.
  
3. Executive Risk admits that it is a Delaware corporation and that it does business in the State of Minnesota. Executive Risk denies the remaining allegations contained in paragraph 3 of the Complaint.

4. To the extent the allegation in paragraph 4 of the Complaint consists of a legal conclusion, no response is required. To the extent a response is required, however, Executive Risk denies the allegation in this paragraph. Executive Risk specifically avers that this is a non-core proceeding.

5. To the extent the allegations in paragraph 5 of the Complaint consist of legal conclusions, no response is required. To the extent a response is required, however, Executive Risk admits the allegations in this paragraph.

### **HISTORY OF DEBTOR'S OPERATIONS**

6. Executive Risk is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint and on that basis denies those allegations.

7. Executive Risk is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint and on that basis denies those allegations.

8. Executive Risk is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and on that basis denies those allegations.

9. Executive Risk admits that it has received copies of complaints indicating that Miller and Schroeder, Inc. ("M&S") and/or certain of its directors, officers, or employees have been named as defendants in certain lawsuits and arbitration proceedings, and that the plaintiffs in certain lawsuits and arbitrations purportedly seek to recoup losses allegedly suffered in

connection with bond offerings underwritten by M&S. Executive Risk is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 9 of the Complaint and on that basis denies those allegations.

10. Executive Risk is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint and on that basis denies those allegations.

11. Executive Risk denies the allegations in paragraph 11 as written and avers instead that, on September 18, 2000, it issued to M&S an insurance policy numbered 8166-6027 entitled “*THE POWER*<sup>SM</sup> Directors and Officers Liability Insurance Policy Including Employment Practices Liability Coverage” (the “Policy”). Executive Risk further avers that the Policy, subject to all of its terms and conditions, provides to M&S, its officers and directors and subsidiaries created or acquired on or before July 31, 2000 coverage as set forth in the Policy. Except as expressly admitted in this paragraph, Executive Risk denies the allegations of paragraph 11 of the Complaint.

12. Executive Risk admits that the Policy period was July 31, 2000 to July 31, 2003 and that the Policy limits were \$5,000,000. Executive Risk is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 12 of the Complaint and on that basis denies those allegations. Except as expressly admitted in this paragraph, Executive Risk denies the allegations of paragraph 12 of the Complaint.

13. Executive Risk denies the allegations in paragraph 13 as written and avers instead that M&S and/or certain of its directors, officers or employees were named as defendants in certain lawsuits and arbitration proceedings in which the underlying plaintiffs seek to recoup

losses allegedly suffered in connection with the offer, sale or purchase of the Heritage Bonds. Except as expressly admitted in this paragraph, Executive Risk denies the allegations of paragraph 13 of the Complaint.

14. Executive Risk is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint and on that basis denies those allegations.

15. Executive Risk denies the allegations in paragraph 15 of the Complaint.

16. Executive Risk denies the allegation in paragraph 16 as written and avers instead that it has properly denied coverage for losses allegedly associated with the bond litigation because such coverage is unavailable under the express terms and conditions of the Policy. Except as expressly admitted in this paragraph, Executive Risk denies the allegations of paragraph 16 of the Complaint.

#### **COUNT 1 – BREACH OF CONTRACT**

17. Executive Risk incorporates by reference its responses to paragraphs 1 through 16 of the Complaint in their entirety.

18. Executive Risk denies the allegation in paragraph 18 of the Complaint.

19. Executive Risk denies the allegations in paragraph 19 of the Complaint.

20. Executive Risk denies the allegations in paragraph 20 of the Complaint.

## **COUNT 2 – DECLARATORY JUDGMENT**

21. Executive Risk incorporates by reference its responses to paragraphs 1 through 20 of the Complaint in their entirety.

22. Executive Risk denies the allegation in paragraph 22 of the Complaint.

23. Executive Risk denies the allegation in paragraph 23 of the Complaint.

## **PRAYER FOR RELIEF**

24. The prayer for relief is not an allegation as to which a response is required. However, to the extent that a response is required, Executive Risk denies that the Trustee is entitled to the relief requested in his prayer or any relief whatsoever.

Except as expressly admitted by this Answer, Executive Risk denies the allegations in the Trustee's Complaint.

## **DEFENSES**

By way of further answer and defense to the Complaint, the Trustee is not entitled to relief with respect to the alleged policy at issue, for the following reasons:

### **FIRST DEFENSE**

1. The coverage alleged by the Trustee is barred by Endorsement No. 3 to the Policy, which states:

In consideration of the premium charged, this Policy does not apply to any Claim based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of:

- (1) the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, any other federal law, rule or regulation with respect to the regulation

of securities, any rules or regulations of the United States Securities and Exchange Commission, or any amendment of such laws, rules or regulations; or

- (2) any state securities or “Blue Sky” laws or rules or regulations or any amendment of such laws, rules or regulations; or
- (3) any provision of the common law imposing liability in connection with the offer, sale or purchase of securities.

### **SECOND DEFENSE**

2. The coverage alleged by the Trustee is barred by Endorsement No. 9 to the Policy, which provides:

In consideration of the premium charged:

- (1) No coverage will be made available under the Policy for Loss including Defense Expenses for any Claim made against any Insured based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving an Insured’s actual or alleged rendering or failure to render the following services:

Investment Banking Services  
Security Broker/Dealer Services  
Securities Underwriting

- (2) Paragraph (1) above is not intended, however, nor shall it be construed, to apply to Loss, including Defense Expenses, in connection with any Claim against an Insured to the extent that such Claim is for a Wrongful Act by Insured Person in connection with the management or supervision of any division, Subsidiary or group of the Parent Corporation offering any of the aforementioned services.

### **THIRD DEFENSE**

3. The Trustee’s claim is or may be barred, in whole or in part, to the extent that the claims seek coverage for any person or entity that is not an “Insured” within the meaning of the Policy.

#### **FOURTH DEFENSE**

4. The Trustee's claim is or may be barred, in whole or in part, to the extent that the claims for which the Trustee seeks coverage do not give rise to a "Loss" within the meaning of the Policy.

#### **FIFTH DEFENSE**

5. The Trustee's claim is or may be barred, in whole or in part, to the extent that the claims for which the Trustee seeks coverage constitute "fines, taxes or penalties, punitive or exemplary damages, the multiplied portion of any multiplied damage award, or matters which are uninsurable under the law pursuant to which this Policy will be construed . . . ." Policy Section III(C).

#### **SIXTH DEFENSE**

6. The Trustee's claim is or may be barred, in whole or in part, to the extent that the Trustee seeks coverage for disgorgement, restitution, or payments of amounts to which any Insured is not legally entitled.

#### **SEVENTH DEFENSE**

7. The Trustee's claim is or may be barred, in whole or in part, to the extent that the Trustee seeks coverage for defense expenses incurred to prosecute claims for affirmative relief against others.

#### **EIGHTH DEFENSE**

8. The Trustee's claim is or may be barred, in whole or in part, to the extent that the Trustee seeks coverage for any loss excluded by Section III(A)(1) of the Policy, which provides that the Policy does not apply to:

(A) **Loss**, other than **Defense Expenses**, which an **Insured** is obligated to pay:

- (1) as a result of a **Claim** brought about or contributed to in fact by any dishonest or fraudulent act or omission or any willful violation of any statute, rule or law by any **Insured**, or by gaining by any **Insured**, of any profit, remuneration or advantage to which such **Insured** is not legally entitled; provided, that for the purposes of determining applicability of this EXCLUSION (A)(1), no **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person**; and further, provided, that each **Insured** agrees that, if it is finally established that the Underwriter has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION (A)(1), such **Insured** will repay the Underwriter upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with such **Claim**.

#### **NINTH DEFENSE**

9. The Trustee's claim is or may be barred, in whole or in part, to the extent that the Trustee has failed to comply with the Policy condition that:

- (1) No action may be taken against the Underwriter unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insureds'** obligation to pay has been finally determined either by judgment against the **Insureds** after adjudicatory proceedings, or by written agreement of the **Insureds**, the claimant and the Underwriter.
- (2) No person or entity will have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured**; nor may the Underwriter be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**. The Underwriter will not be relieved of any of its obligations under the Policy by the bankruptcy or insolvency of any of the **Insureds** or their estates.

Policy, Section IV(L).

#### **TENTH DEFENSE**

10. The Trustee's claim is or may be barred, in whole or in part, to the extent that it is covered by insurance other than the Policy.

#### **ELEVENTH DEFENSE**

11. The Trustee's claim is or may be barred, in whole or in part, based on the doctrines of laches, waiver and/or estoppel.

#### **TWELFTH DEFENSE**

12. The Trustee's claim is or may be barred, in whole or in part, to the extent that Executive Risk was not provided with a written request to incur defense expenses.

#### **THIRTEENTH DEFENSE**

13. The Trustee's claim is or may be barred, in whole or in part, by the exclusion set forth in Section III(D)(3) of the Policy, which provides that the Policy does not apply to:

(3) any fact circumstance, situation, transaction, event or  
**Wrongful Act:**

- (a) underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding of which any **Insured** had received written notice before the Inception Date" in ITEM 2(a) of the Declarations; or
- (b) which, before the Inception Date in ITEM 2(a) of the Declarations was the subject of any notice given by or on behalf of any **Insured** under any other policy of insurance . . . .

#### **FOURTEENTH DEFENSE**

14. To the extent that the Trustee or any Insured incurred unreasonable and inappropriate costs or voluntarily assumed costs in connection with any or all of the alleged underlying liabilities, insurance coverage may be barred, in whole or in part, for such costs.

### **FIFTEENTH DEFENSE**

15. The Trustee's claim is or may be barred, in whole or in part, by the exclusion set forth in Section III(G) of the Policy, which provides that the Policy does not apply to:

- (G) any **Claim** against any **Subsidiary** or other entity acquired by the **Company**, whether by merger, consolidation or otherwise, or against any **Insured Person** of such **Subsidiary** or other entity in his or her capacity as such for any **Wrongful Act**, including any **Employment Practices Wrongful Act**, committed during any time in which such entity is not a **Subsidiary** or at any time before the **Company's** acquisition of such entity . . . .

### **SIXTEENTH DEFENSE**

16. The Trustee's claim is or may be barred, in whole or in part, to the extent that Insureds under the Policy failed to mitigate damages.

### **SEVENTEENTH DEFENSE**

17. The Trustee's claim is or may be barred, in whole or in part, by other terms, provisions, limitations, conditions, definitions, retention, and exclusions of the Policy. Executive Risk reserves the right to assert affirmatively any other matter that constitutes an avoidance or affirmative defense under applicable rules.

WHEREFORE, Executive Risk requests that the Trustee take nothing on his claims, that all costs be taxed against him and that Executive Risk have such other and further relief to which it may be entitled.

Respectfully submitted,

BASSFORD REMELE, A PROFESSIONAL  
ASSOCIATION

By: \_\_\_\_\_



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Dated: February 13, 2004

*Attorneys for Defendant Executive Risk  
Indemnity Inc.*

STATE OF MINNESOTA     )  
  ) ss.  
COUNTY OF HENNEPIN    )

Service of the attached was made on November 14, 2003 upon the attorney(s) named below by mailing to him/her (them) a copy to his/her (their) last known address by the undersigned on behalf of BASSFORD REMELE, A Professional Association, as attorney of record in the said action.

Service of:

Executive Risk Indemnity Inc.'s Answer

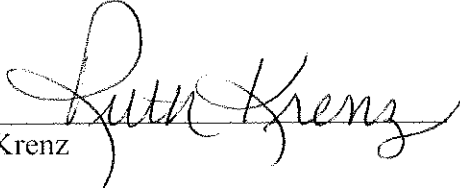
Attorney(s) Served:

Brian F. Leonard, Trustee – ***By Fax and Mail***  
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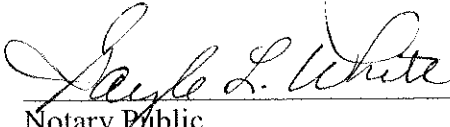
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\_\_\_\_\_  
Ruth Krenz

Subscribed and sworn to before me  
this 13<sup>th</sup> day of February, 2004.

  
\_\_\_\_\_  
Notary Public

